



U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

Margaret L. Hutchinson, Civil Chief
Direct Dial: (215) 861-8282
Facsimile: (215) 861-8618
E-mail Address: margaret.hutchinson@usdoj.gov

615 Chestnut Street
Suite 1250
Philadelphia, Pennsylvania 19106-4476
(215) 861-8200

January 16, 2014

John Miravich, Esquire
Eagleview Corporation Center
Fox Rothschild, LLP
747 Constitution Drive, Suite 100
P.O. Box 673
Exton, PA 19341-0673

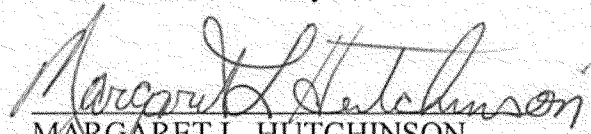
Re: United States and Commonwealth of Pennsylvania v. City of Reading, PA
Civil Action No. 04-cv-5696

Dear Mr. Miravich:

Enclosed for your review and signature is the Notice of Modification of Consent Decree in the above case. Please sign it and return it to me for circulation and filing. Please also find enclosed the previously discussed penalty letter with attachment.

Sincerely,

ZANE DAVID MEMEGER
United States Attorney


MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

Enclosure

cc: Christopher Day, EPA
Gary Hepford, PADEP

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
And COMMONWEALTH OF
PENNSYLVANIA

Plaintiffs,

v.

City of Reading, Pennsylvania.

Defendant.

Civil Action No. 04-05696

NOTICE OF MODIFICATION OF CONSENT DECREE

Whereas: The United States of America (“United States”) acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), the Commonwealth of Pennsylvania (“Commonwealth”) (collectively, “Plaintiffs”), and the City of Reading (“Reading”), constituting all of the parties (the “Parties”) to the Consent Decree in the above-captioned matter entered by the Court on November 7, 2005 (the “Decree” or “CD”), hereby provide notice to the Court pursuant to paragraph 91 of the Decree in this matter regarding a modification of certain provisions of the Decree. Attached hereto as Exhibit A are the extensions and modifications to the Decree subject to this Notice of Modification of Consent Decree (the “Modification”). All other ongoing commitments and requirements of the Decree remain in full force and effect.

Whereas: The United States filed a complaint against Reading on December 9, 2004, seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319 for Reading’s alleged violations of the CWA, 33 U.S.C. § 1251 - 1387.

Whereas: The Commonwealth filed as co-plaintiff a motion for intervention and

complaint against Reading on December 16, 2004, pursuant to Rule 24 of the Federal Rules of Civil Procedure, seeking injunctive relief and civil penalties for Reading's alleged violations of the federal CWA, 33 U.S.C. §§ 1251 - 1387 and the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.S. 1987 *as amended*, 35 P.S. §§ 691-1001 ("the Clean Streams Law").

Whereas: On November 7, 2005, this Court entered the Decree resolving the above-captioned enforcement action brought by the Plaintiffs against Reading.

Whereas: Reading operates a sanitary sewer collection system and wastewater treatment plant that serves the residents of Reading and surrounding municipalities. Those municipalities (not parties to this Decree but hereinafter "Contributing Municipalities") contributing sewage to the Reading sewer collection system and wastewater treatment plant are: Alsace Township, Bern Township, Cumru Township, Kenhorst Borough, Laureldale Borough, Mohnton Borough, Mt. Penn Borough, Muhlenberg Township, Robeson Township, Shillington Borough, Spring Township, and Wyomissing Borough.

Whereas: The Decree contains Reading's commitments to perform certain tasks and the dates by which these tasks are to be accomplished, including but not limited to:

Construction completion of a substantial rehabilitation of Reading's wastewater treatment plant ("Plant") by October 2012 (CD ¶23);

Rehabilitation of Reading's wastewater collection system by January 2012 (CD ¶28);

Responsible management of the City finances and sewer revenue fund to provide adequate financial resources for the operation, maintenance and capital improvements for the tasks set forth in the Decree (CD ¶ 40).

Whereas: Reading did not meet certain terms and dates contained in the Decree.

Whereas: Reading has successfully accomplished many tasks required by the Decree including improvements in the staffing, operation, management, and maintenance of the Plant.

Whereas: The Parties acknowledge Reading's declining fiscal health for the past

several years leading to the 2009 declaration by Pennsylvania's Secretary of the Department of Community and Economic Development that Reading is a "Distressed Municipality" pursuant to Pennsylvania's Municipalities Financial Recovery Act, 53 P. S. §§ 11701.101 - 11701.501.

Now therefore, in consideration of the agreement amongst all parties that the Decree be modified, it will be modified as follows:

1. **Treatment Plant Alternatives Submission.** Paragraph 18 of the Decree requires that Reading submit to Plaintiffs for review and approval a technically sound and economically feasible treatment alternative to meet projected capacity based on influent wastewater characteristics, waste load projections, current permit limits, and future regulatory requirements. Reading submitted Chapters 5 and 6 of its Act 537 Special Study on August 24, 2012 ("Special Study"). The Plaintiffs have accepted the August 24, 2012 submission as satisfaction of Reading's obligation under Paragraph 18 of the Decree, subject to completion of all wastewater treatment plant improvements identified therein by February 28, 2018.

2. **Capital Improvements Plan.** Paragraph 19 of the Decree requires the submission of a capital improvements plan and the same has been submitted for review and approval. On June 28, 2013, Reading submitted a capital improvements plan associated with the wastewater treatment plant improvements identified in the Special Study. Plaintiffs have accepted the June 28, 2013 capital improvements plan as satisfaction of Reading's obligation under Paragraph 19 of the Decree.

3. **Contract Awards.** On April 22, 2013, Reading's City Council approved the award of a \$5.35 million contract to RK&K Engineering to design the improvements to the wastewater treatment plant identified in the Special Study, as contemplated in paragraph 20 of the Decree.

4. Permit Applications and Design. The date specified in Paragraph 21 of the Decree requiring that Reading complete and submit to the Commonwealth the NPDES (Part I) and the Water Quality Management (Part II) Permit applications, as necessary, to implement the approved treatment alternative, is hereby modified to April 30, 2013, for the Part I Permit submission (which Reading has completed and submitted); and September 1, 2014, for the Part II Permit submission. As specified in Paragraph 21 of the Decree, Reading shall also obtain other approvals and/or permits as necessary including but not limited to: NPDES permits; permits for Construction and/or Earthmoving permits pursuant to 25 PA Code Chapter 102; and, if necessary, a permit for water obstruction/wetlands pursuant to 25 PA Code Chapter 105 and/or a permit issued under Section 404 of the CWA.

5. Permitting. The Commonwealth shall use best efforts to provide a timely review of the submitted permit applications required for the permit issuance with the intention that both Phase I and Phase II permits may be issued within 90 days after submission of administratively and technically complete applications.

6. Construction Completion of the wastewater treatment plant. The date specified in Paragraph 23.b. of the Decree requiring that Reading complete construction of the upgrade and/or expansion of the Plant at the existing location is hereby modified to **February 28, 2018.**

a. Construction Completion Interim Milestone - Construction Completion of the Secondary Digesters Rehabilitation. By no later than July 31, 2015, Reading shall complete the rehabilitation of Secondary Digester Number Four.

7. GIS Mapping of the Sanitary Sewer Collection System. The date specified in Paragraph 25.b. of the Decree for Reading's submission of its certification of the development

and implementation of a functional Geographic Information System (“GIS”) mapping of Reading’s sanitary sewer collection system as described therein is hereby modified to **June 30, 2013**. By electronic mail on June 28, 2013, Reading submitted such certification to the Plaintiffs.

8. GIS Mapping of the Storm Water Collection System. The date specified in Paragraph 25.c. of the Decree requiring Reading’s submission of its certification of the completion of the GIS for Reading’s storm water collection system as described therein is hereby modified to **June 30, 2013**. By electronic mail on June 28, 2013, Reading submitted such certification to the Plaintiffs.

9. Sanitary Sewer System Evaluation Program. The date specified in Paragraph 26 of the Decree requiring Reading to develop a program of continuing infiltration/inflow (I/I) analysis and sewer system evaluation of its collection system to identify the priority areas of the sanitary sewer system that require repair, replacement and/or other remediation, and as otherwise described therein, is hereby modified to the following schedule:

a. By no later than November 30, 2013, complete hydraulic modeling of the sanitary sewer collection system. On November 15, 2013, Reading proposed a model of its sanitary sewer collection system developed on historic flow monitoring data in satisfaction of its obligation under Paragraph 26(a)(2) of the Decree.

b. By no later than March 31, 2014, complete the I /I evaluation of the sanitary sewer collection system.

c. By no later than June 30, 2014, complete closed circuit television inspections of the sanitary sewer collection system.

d. By no later than December 31, 2014, complete the Sanitary Sewer

Evaluation Survey that identifies priority areas of the sanitary sewer system that require repair, replacement, upgrade, and/or other remediation.

10. Rehabilitation Plan. The date specified in Paragraph 27 of the Decree requiring Reading to develop and submit to Plaintiffs for review and approval a “Rehabilitation Plan” to adequately address those specific priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation, and as otherwise described therein, is hereby modified to **February 28, 2015**. The Rehabilitation Plan shall contain an implementation schedule. The Commonwealth and Reading may enter into a separate agreement to memorialize the implementation schedule of the Rehabilitation Plan to provide for adequate accountability and oversight. For purposes of this Decree, EPA’s written concurrence on that agreement (including the schedule) shall document Reading’s completion of obligations set forth in Paragraph 27 of this Decree, with the exceptions of those tasks identified in Paragraph 11 below.

11. Rehabilitation of Priority Areas of Collection System. Reading has identified the highest priority areas of the collection system. Reading shall complete construction in accordance with the following schedule:

- a. By no later than June 30, 2014, complete construction of the 6th and Canal 42” force main.
- b. By no later than January 31, 2018, complete upgrades to the 6th and Canal Pumping Station.
- c. By no later than January 31, 2018, complete upgrades to the 19th Ward Pumping Station.

12. Requirement for Dedicated Sewer Fund. In furtherance of the purpose of the Decree, the Parties agree that Reading shall maintain a dedicated sewer fund comprised of

revenues as described in Paragraph 40 of the Decree from which Reading may not assess and collect for its general revenue funds beyond three (3) million dollars per calendar year unless Reading satisfies the requirements set forth in Paragraph 40 of the Decree.

13. Annual Meetings. The Parties shall meet at least annually, on or about August 1 of each year, during the term of this Amendment to review Annual Progress on its implementation.

14. Stipulated Penalties. The payment of civil penalties to the Commonwealth of Pennsylvania contained in Section IX, paragraph 50 is hereby modified to be sent to the Attention of David Gates, Environmental Protection Compliance Specialist in substitution for Lee Yohn, Compliance Specialist.

15. Notice. The Notice provisions of the Decree contained in Section XIX paragraph 90 of the decree are here by modified as follows:

As to the United States:

Margaret L. Hutchinson, Esq.
Assistant United States Attorney
Civil Division Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250

As to the United States Environmental Protection Agency:

Christopher A. Day, Esq. (3RC20)
Senior Assistant Regional Counsel
United States Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Chief, NPDES Enforcement branch (3WP42)
United States Environmental protection Agency
Region III
1650 Arch Street
Philadelphia, Pa. 19103

As to the Commonwealth of Pennsylvania:

Gary Hepford, Esq.
Assistant Counsel
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Ave.
Harrisburg, PA 17110-8200

Regional Water Management Program Manager
Pennsylvania Department of Environmental Protection,
909 Elmerton Ave.
Harrisburg, PA 17110-8200

As to the City of Reading:

Ralph Johnson
Director of Public Works
815 Washington Street
Reading, PA 19601

John J. Miravich, Esq.
Fox Rothschild LLP
747 Constitution Drive
Exton, PA 19341

Jointly submitted this _____ day of _____ 20____ by all of the Parties:

FOR THE UNITED STATES OF AMERICA:

MARGARET L. HUTCHINSON
Assistant United States Attorney Chief, Civil Division
Eastern Division of Pennsylvania
Assistant United States Attorney
Civil Division Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250

FOR THE COMMONWEALTH OF PENNSYLVANIA:

GARY HEPFORD
Assistant Counsel
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Ave.
Harrisburg, PA 17110-8200

FOR THE CITY OF READING:

JOHN J. MIRAVICH
Special Counsel to the City of Reading
Fox Rothschild LLP
747 Constitution Drive
Exton, PA 19341

<u>Obligation</u>	<u>ORIGINAL CD DATE</u>	<u>PROPOSED CD DATE OR ACTUAL DATE</u>
<u>WWTP</u>		
WWTP Upgrade Alternatives (including any Evaluation of Existing and Alternatives) (CD ¶18)	11/7/06	Actual Date – Submitted as part of the 537 Plan on 5/1/2012
Capital Improvements Plan (CD ¶19)	10/15/05	Actual Date – most recent revision submitted 6/28/2013
Request for Proposals ¶20	9 months from Alternative Approval	Actual Date - RFP winter 2012. Contract awarded 4/29/13
Permit Application and Design CD ¶21	10/15/06	Part I – 4/30/2013 Part II – 9/1/2014
WWTP Construction Completion ¶23	9/15/12	Proposed CD Date - 2/28/18
<u>COLLECTION SYSTEM</u>	<u>ORIGINAL CD DATE</u>	<u>PROPOSED CD DATE OR ACTUAL DATE</u>
GIS mapping of sanitary sewer due (CD ¶25(b))	11/7/07	Actual Date - 6/28/2013

GIS mapping of storm water collection system due (CD ¶25(c))	11/7/08	Actual Date - 6/28/2013
Sanitary Sewer System Evaluation Program (CD ¶26)	January 15, 2008	11/30/2013 - Complete hydraulic modeling of the sanitary sewer collection system. 3/31/2014 - Complete the I/I evaluation of the sanitary sewer collection system. 6/30/ 2014 - Complete closed circuit television inspections of the sanitary sewer collection system. 12/31 /2014 - Complete the Sanitary Sewer Evaluation Survey that identifies priority areas of the sanitary sewer system that require repair, replacement, upgrade, and/or other remediation.
Rehabilitation plan must be developed to address priority areas of Reading's sewer system. (CD ¶27)	January 15, 2008	2/25/2015
Rehabilitation plan must be implemented. (CD ¶28)	January 15, 2012	6/30/2014 -Complete construction of the 6 th and Canal 42" force main. 1/31/2018 -Complete upgrades to the 6 th and Canal Pumping Station. 1/31/ 2018 -Complete upgrades to the 19 th Ward Pumping Station. 1/31/ 2018 -Complete construction of the 19 th Ward pump station and force main rehabilitation projects.
Financial ¶40	ongoing	
Annual Meetings	ongoing	